

## Message Text

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PAGE 01 STATE 101881  
ORIGIN L-03

INFO OCT-01 EUR-12 ISO-00 EB-07 TRSE-00 AGRE-00 OPIC-03  
EA-07 /033 R

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APPROVED BY EB/IFD/OMA:CCUNDIFF  
L:SS WEBEL  
EB:RKAUZLARICH  
EUR/RPE:PLAASE(SUBS)  
TREASURY:DPRITCHETT  
EB/ORF/FSE:LRAICHT(SUBS)  
-----042332Z 004356 /66  
O 042239Z MAY 77  
FM SECSTATE WASHDC  
TO USMISSION OECD PARIS IMMEDIATE

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E.O. 11652: N/A

TAGS: OECD, CIEC, EINV, EFIN

SUBJECT: CIEC FAC - FOREIGN DIRECT INVESTMENT

REF: A) OECD 12908, B) OECD 12957, C) OECD 12536  
D) STATE 99389

PASS - DAVID GANTZ, CIEC DELEGATION

1. COMMENTS ON G-8 LANGUAGE CONTAINED IN REFS A AND B FOLLOW:
2. US DEL CAN ACCEPT SUBSTITUTION OF "HOST COUNTRIES" IN PARA 3 OF G-8 TEXT, PURSUANT TO EC REQUEST CITED IN REF B. PHRASE "DEVELOPING COUNTRIES" SHOULD BE STRONGLY LIMITED OFFICIAL USE

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RESISTED, BECAUSE DEVELOPED COUNTRIES SHOULD BENEFIT FROM THIS SECTION TO SOME EXTENT AS DEVELOPING COUNTRIES, ESPECIALLY IN LIGHT OF OPEC DIRECT INVESTMENTS IN DEVELOPED COUNTRIES, AND BECAUSE WE HAVE, IN CODES OF CONDUCT AND ELSEWHERE, RESISTED NOTION THAT LDCE HAVE ANY SPECIAL RIGHTS IN REGARD TO THEIR TREATMENT OF FOREIGN INVESTMENT.

3. AS TO EC PROPOSAL IN PARA 2 OF REF B, US CAN ACCEPT LANGUAGE THAT "HOST STATES DETERMINE THE SECTORS INTO WHICH FOREIGN PRIVATE INVESTMENT MAY BE ADMITTED", BUT SHOULD CONTINUE TO RESIST BALANCE OF SENTENCE FOR REASONS STATED IN REF. D. HOWEVER EC READS ORIGINAL U.S. TEXT, OUR INTENTION WAS NOT TO HAVE STATEMENT APPLICABLE TO EXISTING INVESTMENTS.

4. IN REGARD TO PARA 3 OF G-8 TEXT, US DEL SHOULD ALSO RAISE WITH G-8 REPS, (AND ESPECIALLY LEVY OF SWITZERLAND) THE FACT THAT PARA 3, IN BOTH US AND OTHER G-8 TEXTS, IGNORES FACT THAT MANY G-8 COUNTRIES HAVE BILATERAL AGREEMENTS WITH LDCS WHICH OFTEN CALL FOR FREEDOM OF ESTABLISHMENT AND ALSO NATIONAL TREATMENT OF ESTABLISHED INVESTMENTS. US HAS RESISTED INSERTING LANGUAGE HERE ABOUT SOVEREIGN RIGHT "TO BE EXERCISED CONSISTENT WITH TREATY OBLIGATIONS", BUT THIS, ALONG WITH REFERENCE TO INTERNATIONAL LAW, WOULD BECOME NECESSITY SHOULD LANGUAGE OF PARA 3 COVER ESTABLISHED INVESTMENT.

5. PARA 2 LANGUAGE OF REF A IS ACCEPTABLE UPTO PARA 7 OF G-8 TEXT.

6. CONCERNING PARA 7 OF G-8 TEXT, CONTAINED IN REF A:  
-- A - IS NOT THE WORD "PERMANENCE" IN 7(B) A BIT STRONG?  
WE COULD ACCEPT ITS DELETION.

-- B - PARA 7(F) HAS BEEN MODIFIED IN UNACCEPTABLE WAY FROM LANGUAGE CONTAINED IN PARA 12 OF REF. C. PROBLEM LIMITED OFFICIAL USE

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WITH NEW LANGUAGE IS THAT IT PERMITS ARBITRATION ONLY WHERE HOST COUNTRY PROCEDURES DO NOT RESOLVE ISSUE. HOWEVER, ICSID AGREEMENTS DO NOT NECESSARILY, AND IN FACT RARELY, CALL UPON USE OF LOCAL PROCEDURES BEFORE RESORT MAY BE HAD TO ICSID. THUS, WHEN JAMAICA REFUSED, IN VIOLATION OF ITS CONTRACTUAL AGREEMENT, TO ARBITRATE THE ALUMINUM DISPUTES BEFORE ICSID, THE US MADE CLEAR THAT FAILURE TO HONOR AN ARBITRAL AWARD WOULD HAVE CONSTITUTED A TREATY BREACH. SO TOO, APART FROM ICSID, REFUSAL OF A STATE TO HONOR A CONTRACTUAL AGREEMENT TO ARBITRATE CAN CONSTITUTE A DENIAL OF JUSTICE.

-- ON ASSUMPTION THAT G-8 TEXT OF PARA 7(F) WILL NOT BE ACCEPTED BY G-19 AND THAT COMPROMISE WILL BE SOUGHT, US DEL SHOULD STRONGLY URGE G-8 TO PUT FORWARD SUBSTANCE (THOUGH NOT GRAMMAR) OF LANGUAGE CONTAINED IN PARA 12 OF REF C (OR ORIGINAL US LANGUAGE). US DEL CANNOT ACCEPT LANGUAGE WHICH ENTAILS PROBLEMS DESCRIBED ABOVE. (WE WOULD BE INTERESTED IN G-8 RATIONAL FOR "TWO-TIER"

APPROACH TO ARBITRATION, AS IT IS CONTRARY TO MANY OF  
THEIR OWN PRACTICES.) ANOTHER ACCEPTABLE FORMULATION  
WOULD BE THE FOLLOWING:

-- "HOST COUNTRY PROVISION OF AND/OR AGREEMENT TO STABLE,  
TRANSPARENT, AND, WHENEVER POSSIBLE, PRE-AGREED PROCEDURES  
FOR THE SETTLEMENT OF DISPUTES WITH FOREIGN INVESTORS IN  
ACCORDANCE WITH GENERALLY ACCEPTED PROCEDURAL STANDARDS  
CONTAINED IN INTERNATIONAL LAW. THE IBRD'S CENTRE FOR THE  
SETTLEMENT OF INVESTMENT DISPUTES IS AN IMPORTANT  
INSTITUTION IN THIS REGARD". VANCE

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01-Jan-1994 12:00:00 am  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
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**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 22 May 2009  
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**Executive Order:** N/A  
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**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
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**Status:** NATIVE  
**Subject:** CIEC FAC - FOREIGN DIRECT INVESTMENT  
**TAGS:** EFIN, EINV, US, OECD, CIEC  
**To:** OECD PARIS  
**Type:** TE  
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**Review Markings:**  
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